



City of Atlanta Housing Commission

Date: 05/30/23

To: Honorable Atlanta City Council Members

CC: Honorable Andre Dickens, Mayor, City of Atlanta

From: Andy Schneggenburger, Chair, Atlanta Housing Commission

RE: Reducing Evictions in the City of Atlanta

The recent escalation in eviction filings, brought to light by academic and journalists' research, and the testimony of renters and their legal advocates, has exposed unscrupulous practices by too many property owners who take advantage of a legal environment in Georgia which maintains an imbalance of power steeply favoring owners over tenants. This is not to imply that all or even most property owners and managers utilize these practices. Those that do have created a need to respond.

In the interest of increasing housing and financial stability for thousands of Atlanta's low-income residents, reducing homelessness, helping landlords gather past-due rents with fair and just process, and reducing the extreme backlog of eviction cases in local magistrate courts, the Atlanta Housing Commission (AHC) recommends immediately strengthening certain legal rights of tenants renting homes in the City of Atlanta and increasing their access to legal services and assistance to ensure enforcement of those rights. We also recommend a steadfast commitment by the City to pursue the amendment of certain Georgia laws whose growing abuse by some property owners contributes to our housing crisis and the financial ruin of too many renters.

While household income is always a factor in housing security given the continually increasing gap between incomes and housing costs, these recommendations focused on policies and practices which can be created or improved in order to reduce the evictions of Atlanta's low-income residents who rent their homes. These recommendations are the result of four months of testimony from renters, advocates, industry representatives, and stakeholders; research and reporting gathered from local sources and other municipalities including Omaha NE, New York NY, Philadelphia PA, and Charlotte NC; and three AHC public work sessions focused on the issue of evictions and other conditions facing renters in Atlanta. We would like to thank the many stakeholders whose experiences, knowledge, expertise, and commitment to participation provided invaluable contributions to these recommendations.

Specific recommendations include immediate actions the City of Atlanta can take to improve tenants' rights and the ability to exercise them, collaborative action with County magistrate courts, and changes in Georgia law we believe should be annual priorities in the City's legislative agenda until successful. The benefits are extensive. Enacting these recommendations will help to reduce the substantial burden on public resources to combat homelessness, housing insecurity, and reduce the long-term damage to household financial health wrought by cavalier or unreasonable eviction filings. High demand for

affordable, safe and sanitary housing make time of the essence for thousands of families trapped in unsafe and deplorable housing conditions, including those facing unjust eviction into housing insecurity.

Please see the AHC's specific policy and program recommendations below, followed by an addendum with supporting context and rationale. Certain recommendations may require additional review and counsel from the City of Atlanta Department of Law.

Recommendations

1. Declare a tenant's right to counsel in eviction proceedings. Support the declaration by expanding the current pilot Eviction Defense Program in two ways:

a) Provide tenants and landlords with information and support about the eviction process and legal rights, and provide pre-eviction diversion resources and emergency rental assistance to low-income renters to reduce evictions and eviction filings, in addition to maintaining the access-to-counsel component of the program.

b) Permanently expand these resources city-wide, with dedicated program funding.

The Eviction Defense Program is in pilot phase, operated by the Atlanta Volunteer Lawyers Foundation (AVLF) with one-time funding. Its services are intentionally limited to representation of low-income renters in eviction court and confined to a small geographic area. Addition of tiered tenant-advocate programming will benefit landlords by reducing the number of evictions filed as well as the wide-ranging negative impacts of those filings on households and our local economy. The expanded program should act as a clearing house for a range of tenant-landlord conflicts, educating renters and landlords about legal rights and the eviction process, reducing evictions and eviction filings by helping to resolve conflicts in advance, and referring clients to Eviction Defense services when necessary. The inclusion of emergency rental assistance funds to be administered by the program will further reduce evictions by coordinating directly within the program by other eviction-diversion efforts. Utilize the legal and program expertise of non-profit partners to administer the expanded services. Data and outcomes from the pilot program are the most reliable source of information for budgetary implications of program expansion. However, due to the clear benefits of these services and the dire need for them city-wide, consider expanding the program as soon as possible.

2. Pass legislation to ratify the recent Council Resolution requiring the acceptance, within the limits of state law, of housing choice and Georgia housing vouchers by rental properties receiving public investment, and to establish common language for the third-party agreements. This requirement should include acceptance of all documented sources of income, such as rental assistance and social security payments.

It is important that all city departments and public agencies adopt common contract language to ensure consistency in implementation and enforcement. It is also important that this resolution is not left as a strictly voluntary action.

3. Require to every extent possible transparent disclosure of all costs to tenants associated with leasing rental housing in the City of Atlanta, prior to the acceptance of non-refundable application fees and/or deposits.

Charging renters fees for ancillary services without notification while marketing and accepting rental applications (with application fees) effectively raises the cost of advertised rent, sometimes far more

than a renter can afford. High non-refundable application fees can trap financially stressed tenants in unexpectedly higher-cost lease agreements once they discover unadvertised fees in the lease.

4. Advocate for a change in State law to provide a seven-day Right to Cure period for tenants prior to an eviction filing, as well as written notice by landlords of an eviction filing.

HB404 in the 2023 State legislative session included a 3-business-day right to cure period and passed with strong bi-partisan support in the House but was not brought to the floor for a vote in the Senate. The bill presented some modest improvements on behalf of tenants, but can be improved from its current form. A seven-day right to cure period, as initially proposed for example, is much more impactful. The City should advocate for stronger statewide tenants' rights like these prior to the 2024 legislative session, and annually (if necessary) as part of the City's legislative policy agenda at the Capitol.

5. Improve immediate public access to information on code enforcement actions at rental properties.

Code Enforcement information can be difficult to find and at times is only available through Open Records Requests. Renters should have access to Code Enforcement reports, particularly if they need documentation for an eviction case they are facing. Prospective renters should also be able to check on the code compliance history of a property prior to submitting a rental application.

Addendum: Context and Recommendation Details

Context Supporting the Recommendations

The Housing Commission's recommendations to strengthen Atlanta's laws protecting the rights of tenants who rent housing is guided by the following facts:

- Housing instability is a leading indicator of critical quality of life deficits including the educational outcomes of children displaced from school, job stability, and mental and physical health.
- The lack of safe affordable housing is a primary challenge to economic advancement faced by Atlanta's low-income households, especially very-low-income households with incomes below 50% AMI.
- Georgia's eviction process and laws are preferential to property owners and offer little if any protection or support to tenants, enabling deeply unfair property management and leasing practices:
 - Georgia has the third fastest eviction process in the country. Renters have just seven days **after** they are served with an eviction to file an answer and offer a "perfect tender" of the rent owed plus court costs. These evictions sometimes come without warning, since there is no requirement for landlords to provide written notice before filing an eviction.
 - Renters in Georgia facing eviction have no guarantee of legal representation to defend themselves in court, and often cannot afford an attorney. According to the Housing Justice League, 90% of property owners have legal counsel in eviction court, while fewer than 10% of tenants have representation.
 - Filing evictions in Georgia is a fast, inexpensive, process. There are no penalties to property owners for unfair, unwarranted, or unnecessary eviction filings, yet the consequence of them doing so can damage the economic prospects and mental health of renters for years. This has resulted in overuse of the action by certain owners, such as the practice of serial filing, even when a dispute between tenant and owner can be resolved without litigation.
 - Georgia does not allow renters to withhold rent, even in cases of property owner neglect and failure to maintain decent housing conditions. Renters understandably refusing to pay rent due to failure by landlords to provide safe, healthy, decent housing can be evicted under current law.
 - Eviction filings, even those that do not result in a judgment, are public record that appear on tenant screening reports. Many landlords use an eviction filing on a person's record alone to justify denying lease applications.
- Renters are an important driver of Atlanta's service-based and government-sector economy, and it is in the City's best interests to ensure their housing in safe, healthy, homes under fair lease terms.
- Renters compose over 56% of the City of Atlanta's residents, and 49.2% of residents are housing burdened, spending more than 30% of household income on rent (ACS 2015-2019).
- Due in part to the well-documented commodification in Atlanta and the metro region of rental housing by investment firms, evictions in Atlanta have risen sharply over the past few years, becoming the highest filing rate in the country. More than 275,000 evictions were filed in the 5-county metro Atlanta area between January 2020 and September 2022, and these evictions disproportionately effect communities of color. Fulton County magistrate court currently has a backlog of more than 12,000 eviction cases. The practice of 'serial filing' – repeated filing of evictions against a tenant, sometimes simply as a threat – is part of the cause. There is an increasing reliance on immediate filing of eviction to settle even minor disputes (as opposed to a last-resort action, even when done so unfairly) despite the damage it does to a tenant's credit history.

Additional Details on the Recommendations

1. Declare a tenant's right to counsel in eviction proceedings. Support the declaration by expanding the current pilot Eviction Defense Program in two ways:

a) **Provide tenants and landlords with information and support about the eviction process and legal rights. Provide pre-eviction diversion resources for low-income renters to reduce evictions and eviction filings, in addition to maintaining the access-to-counsel component of the program.**

b) **Permanently expand these resources city-wide, with dedicated program funding.**

As noted above, the landlord-tenant power imbalance established in state law and in magistrate court proceedings highly favors property owners and landlords. The result has been a growing abuse of these advantages by property owners with a skyrocketing rate of eviction filings in Fulton and DeKalb Counties, and the disproportionate negative impacts (including extreme housing insecurity and homelessness) for renters, who too often face unjust eviction.

Ensuring all low-income tenants have access to counsel when facing eviction would be transformational. Data from other cities having adopted right to counsel laws show a decrease in eviction filings and a marked increase in tenant retention of their rental home. In FY2021, New York City's Eviction Defense program assisted 42,000 households, 84% of which were able to remain in their homes. According to a 2019 report on the new Philadelphia eviction Prevention Project (PEPP) from the Philadelphia Bar Association:

“every \$1 invested into legal representation to prevent eviction saves nearly \$13 in costs to city services. Moreover, legal representation works - only 5% of tenants with representation experienced “disruptive displacement”, as compared to 78% of tenants without representation. With an investment of \$3.5 million, an at-scale right to counsel initiative could assist over 4,000 low-income tenants, making it one of the major anti-displacement efforts in the City.”

Other cities including Newark, NJ have also created Right to Counsel programs. Again, the City of Omaha, NE 2022 Housing Affordability Action Plan recommends expanding a city program providing legal assistance to tenants facing eviction. Funding and services linked to this commitment would flow from the sources in recommendation #1 above, and could be based upon data from the current pilot Eviction Defense Program.

Regarding additional pre-eviction services, helping tenants understand and exercise their legal rights and encouraging landlords to be good stewards of their properties will enable the resolution of many tenant-landlord conflicts prior to filing for eviction, thereby discouraging routine, excessive and unfair filings, and reducing the flow of eviction cases in magistrate courts.

The City of Omaha, NE Housing Affordability Action Plan (see Exhibit A) published in 2022 recommends expanding a program providing legal assistance to tenants facing eviction, which has also been funded by federal COVID relief funds. On p.29 the plan notes “If solutions to avoid eviction can be identified, it is a win for both the landlord and the tenant.” Locally, lessons about implementation and program funding can also be taken from the successes of the PAD diversion program operated with the support of Atlanta Police Department.

Funding for a permanent program could be sustained by a number of ‘vested-interest’ organizations, as well as by a small dedicated-source fee such as a portion of the Short Term Rental registration fee or other property registry fee. Vested-interest organizations include the magistrate courts which would benefit from a reduction in eviction cases, the Georgia Division of Family & Children Services (DFCS) which would similarly benefit from a reduced case log, and Atlanta Public Schools (APS). Student transience due to displacement and the resulting damage to children’s educational attainment is an ongoing area of concern for APS leadership.

Reducing evictions and eviction filings is of significant importance because these actions appear on a person’s credit history, carrying years or decades of damage. Record of an eviction or having one filed can be cause for denial of housing elsewhere, or denial of other access to credit. While eviction is sometimes a necessary action, the ease for property owners to file and execute an eviction in Georgia is incongruent with the severe damage it causes to renters and their families. The situation becomes unjust when eviction is filed against low-income tenants without access to legal counsel who object to their landlord’s failure to maintain healthy, safe, living conditions or who impose numerous junk fees, yet maintain a zero-tolerance policy for payment. Pre-eviction and diversion services can help resolve many legitimate grievances of both property owners and renters without resorting to the extreme step of eviction.

- 2. Pass legislation to ratify the recent Council Resolution requiring the acceptance, within the limits of state law, of housing choice and Georgia housing vouchers by rental properties receiving public investment, and to establish common language for the third-party agreements. This requirement should include acceptance of all documented sources of income, such as rental assistance and social security payments.**

In 2022, the city of Charlotte, NC adopted a Source of Income Protections ordinance that provides an instructive example (see Exhibit B). Other sources of valid income such as social security and rental assistance have also led to the denial of rental applications, similar to the problem with housing vouchers. The legislation should be expanded to include acceptance of all sources of income including rental assistance and social security.

- 3. Require to every extent possible transparent disclosure of all costs to tenants associated with leasing rental housing in the City of Atlanta, prior to the acceptance of non-refundable application fees and/or deposits.**

Exorbitantly high rental application fees are becoming much more common. An indication of the severity of the problem was HB404 introduced in this year’s state legislative session. It would have capped application fees at twice a month’s rent. Unfortunately it was not brought up for a vote in the Senate after passing the House with strong bi-partisan support. The problem here is that financially strapped households cannot afford to lose high non-refundable application fees when they discover that the lease they must sign includes numerous unadvertised fees which effectively increase the monthly cost of renting.

Further legal review is appropriate. Some legal experts indicate that this should not conflict with OCGA 44-7-19 which prohibits municipalities from regulating rents on private rental property, since this legislation would apply to what relevant landlords themselves currently refer to as ‘fees’, distinct from actual rents.

- 4. Advocate for a change in State law to provide a seven-day Right to Cure period for tenants prior to an eviction filing, as well as written notice by landlords of an eviction filing.**

HB404 was not adopted by the state legislature this year, which would have required a three-day Right to Cure period, and other modest renter protections. Its original form included a seven-day Right to Cure period, which should continue to be advocated for. It was also amended to include non-payment of fees as justification for eviction. This should be removed from the bill based upon the recommendation in #3 above, and the fact that pass-thru fees for services are sometimes inflated well above the actual cost of those services to property owners.

5. Improve immediate public access to code enforcement actions at rental properties.

Renters facing eviction sometimes need documentation of records at a property at which they live. In addition, potential renters are often unaware of properties that have been cited for code violations (sometimes repeatedly) but are unable to check on the current status of citations prior to signing a lease. Improving public access to Code Enforcement reports, citations, status of ongoing investigations, and hearing dates specifically of rental properties, would allow renters to utilize this critical public information when they need it.

OCGA 50-18-72(a)(4) contains an exception to the Open Records Act allowing that ongoing investigations are not subject to public disclosure. The Code Enforcement Section sometimes relies on this exception to not disclose ongoing open code enforcement citations. Code enforcement cases can be kept open for extended periods of time which creates a challenge for tenants or prospective tenants who need access to these records quickly.